

June 29, 2009

VIA REGULAR MAIL, EMAIL AND FACSIMILE – 408.292.6293

Allan Andaya
Project Manager
Transportation and Hydraulics Services Division
Department of Public Works
City of San Jose
200 E. Santa Clara Street, 7th Floor
San Jose, CA 95113

RE: Albany-Kieley Storm Drain Improvement Phase V-VI – BID PROTEST

Dear Mr. Andaya:

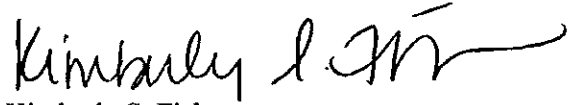
This letter will serve as McGuire and Hester's formal protest of the Notification of Award for the bid submitted by Rodan Builders, Inc. ("Rodan") for the Albany-Kieley Storm Drain Improvement Phase V-VI Project ("Project"). It is McGuire and Hester's position that Rodan's bid is in violation of California Public Contract Code, The City of San Jose Standard Specifications and the Project Specifications in that they have failed to list a subcontractor, as is required in the bid documents, for Bid Item No. 9 - Stamped Asphalt and they are not qualified nor certified to complete that scope of work. Furthermore, we protest their bid on the grounds that they lack the requisite experience to perform the Project work.

Bid Item No. 9 – Stamped Asphalt is a specialty item. The Project specifications, section 39-1.01 state that the "Contractor shall employ an experienced applicator of stamped asphalt." And that, the applicator must be licensed with up to date training and certification for stamped asphalt installation. Rodan is not a licensed or certified installer of stamped asphalt and they failed to list any subcontractors to perform work on the project. Further, because their value for Bid Item No 9 is in excess of one half of one percent of their total bid¹ they are excluded from subcontracting this work out, therefore their bid should be rejected on its face. It is important to note that McGuire and Hester received a bid from Schwartz Construction Services, Inc who is a licensed and certified stamped asphalt subcontractor. Their bid amount matches Rodan's line Item No. 9 exactly (See Exhibit A – attached) in both unit price and overall extension. This is important in that Rodan is stopped from asserting from manipulating this bid item to a level below the threshold for the subcontractor listing requirements.

Notwithstanding the subcontractor listing issues, Rodan's experience that was submitted is wholly insufficient for this Project and the City of San Jose must disqualify them under the Project Specifications section 2-1.10(4).

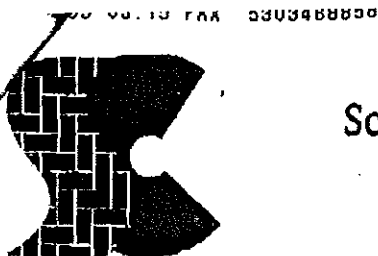
If you have any questions or concerns, please do not hesitate to contact me directly at (510) 632.7676.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kimberly S. Fisher", with a stylized flourish at the end.

Kimberly S. Fisher
Corporate Counsel
McGuire and Hester

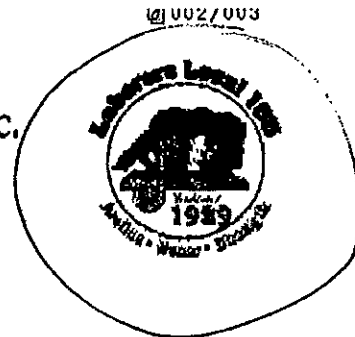
¹ According to Rodan's Bid, one half of one percent is \$4275.00. Their bid item number nine is \$6793.80, which is in excess.



SCHWARTZ CONSTRUCTION

01002/003

Schwartz Construction Services Inc.
STREETPRINT · DURATHERM · LOGOTHERM
www.streetprintcalifornia.com



		DATE: June 11, 2009 Proposal Expires in 30 days															
TO McQuire & Hester Attn: Estimating Department Project Name: Albany-Kiely Storm Drain Improvements Project Location: San Jose		Phone: 650-632-7676 Phone: Mobile: Fax: 510-562-5209 Email:															
SCOPE OF WORK:																	
<table border="1"><thead><tr><th>NO.</th><th>DESCRIPTION</th><th>UNIT</th><th>QUANT</th><th>UNIT PRICE</th><th>TOTAL</th></tr></thead><tbody><tr><td>9</td><td>Stamped Asphalt (Revocable)</td><td>SF</td><td>1340</td><td>\$ 5.07</td><td>\$ 6,793.80</td></tr></tbody></table>						NO.	DESCRIPTION	UNIT	QUANT	UNIT PRICE	TOTAL	9	Stamped Asphalt (Revocable)	SF	1340	\$ 5.07	\$ 6,793.80
NO.	DESCRIPTION	UNIT	QUANT	UNIT PRICE	TOTAL												
9	Stamped Asphalt (Revocable)	SF	1340	\$ 5.07	\$ 6,793.80												
Traffic Control excluded. 1 move-in included.																	
10 days advanced notice required for scheduling.		Terms of Payment: 100% upon completion															
Amount of Bid: 6,793.80																	

P.O. BOX 3135, AUBURN, CA 95604-3135 (530) 889-9222 P • (530) 889-9210 F
Ca 913606 Nv 71413

— Exhibit A —